

Jeffrey Chubak
STORCH AMINI PC
140 East 45th Street, 25th Floor
New York, New York 10017
(212) 490-4100
jchubak@storchamini.com

- and -

Joseph D. Frank (admitted *pro hac vice*)
Jeremy C. Kleinman (admitted *pro hac vice*)
FRANKGECKER LLP
1327 W. Washington Blvd., Suite 5G-H
Chicago, Illinois 60607
(312) 276-1400
jfrank@fgllp.com
jkleinman@fgllp.com

Attorneys for the Defendants

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, Inc., <i>et al.</i> , ¹	Case No. 15-23007-rdd
Debtors.	Jointly Administered
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., <i>et al.</i> ,	
Plaintiffs,	Adv. Proc. No. 18-08245 (RDD)
v.	NOTICE OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS ONE THROUGH FOUR AND PARTIAL SUMMARY JUDGMENT ON COUNTS FIVE THROUGH <u>TWENTY-FIVE</u>
PEPSICO, INC., <i>et al.</i> ,	
Defendants.	

¹ The Debtors are: 2008 Broadway, Inc.; The Great Atlantic & Pacific Tea Company, Inc.; A&P Live Better, LLC; A&P Real Property, LLC; APW Supermarket Corporation; APW Supermarkets, Inc.; Borman's, Inc.; Delaware County Dairies, Inc.; Food Basics, Inc.; Kwik Save Inc.; McLean Avenue Plaza Corp.; Montvale Holdings, Inc.; Montvale-Para Holdings, Inc.; Onpoint, Inc.; Pathmark Stores, Inc.; Plainbridge LLC; Shopwell, Inc.; Super Fresh Food Markets, Inc.; The Old Wine Emporium of Westport, Inc.; Tradewell Foods of Conn., Inc.; and Waldbaum, Inc. (collectively, the "**Debtors**").

PLEASE TAKE NOTICE that pursuant to the accompanying Memorandum of Law In Support of Motion for Summary Judgment on Counts One Through Four and Partial Summary Judgment on Counts Five Through Twenty Five, Defendants' Local Rule 7056-1(b) Statement of Material Facts Not in Dispute, and the Declarations of Joseph D. Frank and Jeremy C. Kleinman and the exhibits annexed thereto, Defendants, through their undersigned counsel, will move before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York (the "Bankruptcy Court"), 300 Quarropas Street, White Plains, NY 10601-4140, on December 11, 2019 at 10:00 a.m., for entry of an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, granting summary judgment in Defendants' favor on Counts One Through Four of the Plaintiffs' Second Amended Adversary Complaint (the "Complaint") and granting partial summary judgment in Defendants' favor on Counts Five through Twenty-Five of the Complaint (the "Motion").

PLEASE TAKE FURTHER NOTICE that any response or objection ("Objection") to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the this Court's Local Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted pro hac vice, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 so as to be received no later than November 4, 2019 at 4:00 p.m. (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that if no Objection is timely filed and served with respect to the Motion, the Defendants may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the Proposed Order attached hereto as Exhibit A, which order may be entered with no further notice or opportunity to be heard.

Dated: October 4, 2019

Respectfully submitted,

/s/ Jeffrey Chubak
Jeffrey Chubak
STORCH AMINI PC
140 East 4th Street, 25th Floor
New York, New York 10017
(212) 490-4100
jchubak@storchamini.com

- and -

Joseph D. Frank (admitted pro hac vice)
Jeremy C. Kleinman (admitted pro hac vice)
FRANKGECKER LLP
1327 West Washington Blvd., Ste. 5G-H
Chicago, Illinois 60607
(312) 276-1400
jfrank@fgllp.com
jkleinman@fgllp.com

Attorneys for the Defendants

Exhibit A
[Proposed Order]

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, Inc., <i>et al.</i> ,	Case No. 15-23007-rdd
Debtors.	Jointly Administered
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., <i>et al.</i> ,	
Plaintiffs,	
v.	Adv. Proc. No. 18-08245 (RDD)
PEPSICO, INC., <i>et al.</i> ,	
Defendants.	

**PROPOSED ORDER GRANTING SUMMARY JUDGMENT ON COUNTS
ONE THROUGH FOUR AND PARTIAL SUMMARY JUDGMENT ON
COUNTS FIVE THROUGH TWENTY-FIVE**

Upon Defendants’ Motion for Summary Judgement on Counts One Through Four and Partial Summary Judgment on Counts Five Through Twenty-Five (the “Motion”); and the Court having considered the Motion, any opposition to the Motion, any replies filed by the Defendants, and the arguments of counsel concerning the Motion, at a hearing before the Court on December 11, 2019 (the “Hearing”); and after due deliberation thereon; and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Court finds that the legal and factual bases for the Motion have been established. There are no genuine issues of material fact as to Counts One through Four of the

Complaint and with respect to certain portions of Counts Five Through Twenty Five of the Complaint.

2. The Motion is GRANTED as set forth herein.

3. Judgment is granted in favor of Defendants as to Counts One Through Four of the Second Amended Adversary Complaint [Dkt. 17].

4. Judgment is granted in favor of Defendants as to Counts Five Through Twenty Five of the Second Amended Adversary Complaint with respect to any claims arising from the sale of goods that accrued prior to April 16, 2014.

5. Judgment is granted in favor of Defendants as to Counts Five Through Twenty Five of the Second Amended Adversary Complaint with respect to any claims not arising from the sale of goods that accrued prior to April 16, 2012.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

DATED: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D DRAIN
UNITED STATES BANKRUPTCY JUDGE